

**ORDINANCE NO. 1
SERIES 2002**

AN ORDINANCE REGULATING PLACEMENT OF STRUCTURES AND OTHER IMPROVEMENTS FOR PRIVATE PURPOSES WITHIN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF GUNNISON AND DEFINING WHEN A LICENSE AGREEMENT FROM THE CITY OF GUNNISON IS NECESSARY PRIOR TO AND/OR FOR EXISTING PLACEMENT OF STRUCTURES OR OTHER IMPROVEMENTS IN PUBLIC RIGHTS-OF-WAY.

WHEREAS, the purpose of public rights-of-way is for the vehicular and pedestrian travel and installation of public utilities. Any use of the public rights-of-way for any private purpose is permissive in nature only. In order for the City to exercise its responsibilities for regulation of use of the public rights-of-way within the City, the City specifically reserves the right to revoke permission for any use of the public rights-of-way when, in the City's sole discretion, the right-of-way is necessary for a public purpose or the private use of the public right-of-way interferes with the public purposes of said right-of-way; and

WHEREAS, many owners or occupants of private property adjacent to public rights-of-way request permission to use those portions of public rights-of-way not actually used for streets and sidewalks for their own private purposes; and

WHEREAS, the City Council wishes to set forth parameters under which the public rights-of-way may be used pursuant to this ordinance, and when written permission of the City will be required for such use of the public rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, THAT:

Section 1. The City Code of the City of Gunnison is hereby amended by the addition of Article 4, Chapter 9, entitled "Public Ways and Property", to read as follows:

**CHAPTER 9
PUBLIC WAYS AND PROPERTY**

ARTICLE 4 USE OF PUBLIC RIGHTS-OF-WAY FOR PRIVATE PURPOSES

- 9-4-1 Definitions
- 9-4-2 Landscaping
- 9-4-3 Structures
- 9-4-4 Irrigation Pumps
- 9-4-5 Compliance with Other Ordinances
- 9-4-6 No Creation of Vested Right
- 9-4-7 Penalty

9-4-1 Definitions. For the purposes of this article the following terms shall have the following meanings when used in this article:

A. **Landscaping.** The planting and maintenance of living plants, such as trees, shrubs, flowers, vegetative ground cover, and turf grasses, and shall include non-living elements such as rock, stone, and bark.

B. **Public Right-of-Way.** A right-of-way dedicated for street, road, utility or pedestrian access purposes within the City of Gunnison, and includes the airspace above said right-of-way.

C. **Structure.** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner which extends above the grade of the street.

D. **Trees and Shrubs.** Woody perennial plants with one or more stems or trunks.

E. **Vested Right.** A right that may not be revoked, canceled, changed, or altered.

F. **Written Permission.** A license agreement with an individual or entity approved by the City of Gunnison.

9-4-2 Landscaping. Landscaping may be installed within the public right-of-way not being used for street, utility, or sidewalk purposes, provided that the landscaping does not impede or obstruct normal vehicular or pedestrian traffic, obstruct access to utilities, create a sight barrier to or from motor vehicles, bicycles or pedestrians, restrict snow plowing activities, or create any other safety hazards.

A. Landscaping shall be located so as not to obstruct fire hydrants or utility boxes and so as to avoid growth into any overhead or underground utility lines. Landscaping may not be installed within six feet (6') of the center line of any utility pole or within six feet (6') of the center line of any underground utility line.

B. No plant material greater than two feet (2') in height shall be located within fifteen feet (15') of a curb cut or intersection.

C. Any tree planted along the street shall be located at least five feet (5') from the curb or the edge of the street, to provide room for utilities, snow plowing, street maintenance, and opening of car doors. No tree or shrub shall obstruct public safety signs.

9-4-3 Structures. No structure shall be erected, installed, or maintained within the public right-of-way without the written permission of the City, except for mailboxes, which comply with the U.S. Postal Service regulations; fences three feet (3') or less in height; and irrigation pump shelters.

9-4-4 Irrigation Pumps and Pump Shelters. Irrigation pumps and pump shelters may be placed within the public right-of-way without written permission of the City at the owner's risk. Owners who do not remove their irrigations pumps during the non-irrigation season leave them in at their own risk.

9-4-5 Compliance with Other Ordinances. Any use of the public right-of-way for private purposes shall comply with the terms of this article and all other applicable portions of the City Code, for example, see Chapter 8, Article 2, Sidewalk Vendor.

9-4-6 No Creation of Vested Right. Neither the terms of this ordinance nor the granting of written permission for use of a public right-of-way for private purposes shall create any vested right or interest in any part of such public property by virtue of any such use for the installation and maintenance of landscaping or other improvements within the public right-of-way. The City specifically reserves unto itself, upon its sole determination, to require removal of any improvements or landscaping from the public right-of-way.

9-4-7 Penalty. Any person violating any provision of this article shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$1,000.00.

Section 2. If any section, subsection, paragraph, sentence, or clause of this ordinance is for any reason held to be invalid, illegal, or unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares it would have passed this ordinance with the section, subsection, paragraph, sentence, or clause regardless of the fact that any one or more of such sections, subsections, paragraphs, sentences, or clauses, might be held invalid.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 12th day of March, 2002, on first reading and introduced, read, and adopted on second and final reading this 26th day of March, 2002.

Mayor

City Clerk